



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200931061

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

SE: T: EP: RA: T4

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XXXXXXXXXXXXXXXXXX

APR 22 2009

Legend:

Taxpayer A	= XXXXXXXXXXXXXXXXXXXX
Taxpayer B	= XXXXXXXXXXXXXXXXXXXX
Individual T	= XXXXXXXXXXXXXXXXXXXX
IRA X	= XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Financial Institution A	= XXXXXXXXXXXXXXXXXXXX
Investment Company L	= XXXXXXXXXXXXXXXXXXXX
Company C	= XXXXXXXXXXXXXXXXXXXX
Form A	= XXXXXXXXXXXXXXXXXXXX
Amount D	= XXXXXXXXXXXXXXXXXXXX
Date 1	= XXXXXXXXXXXXXXXXXXXX
Date 2	= XXXXXXXXXXXXXXXXXXXX
Date 3	= XXXXXXXXXXXXXXXXXXXX
Date 4	= XXXXXXXXXXXXXXXXXXXX

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Dear XXXXXXXX

This is in response to your request dated February 21, 2008, as supplemented by correspondence dated June 24, September 22, October 8, 14, December 4, 2008, January 7, and February 27, 2009, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 68, represents that she received a distribution from IRA X totaling Amount D. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error made by Individual T of Investment Company L which resulted in Amount D being deposited into a non-IRA account.

Taxpayer A represents that on Date 1, Individual T, a financial advisor with Investment Company L, assisted her in completing Form A, a claimant statement, requesting a distribution of Amount D from IRA X. Taxpayer A was the spousal beneficiary of IRA X which was maintained by Taxpayer B at Financial Institution A. Taxpayer A intended to rollover Amount D into an IRA. Taxpayer A received Amount D on Date 2. On Date 3, Amount D was erroneously deposited into a non-IRA account at Investment Company L. Taxpayer A was not aware of the error. Investment Company L entered into a settlement agreement with Taxpayer A to resolve any error by Individual T and Investment Company L. On Date 4, Amount D was subsequently placed into an eligible rollover IRA with Company C where it still remains.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

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Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any the time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

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The information presented and the documentation submitted by Taxpayer A is consistent with Taxpayer A's assertion that her failure to accomplish a timely rollover was due to an error made by Individual T of Investment Company L, which resulted in Amount D being deposited into a non-IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D which was rolled over to an eligible rollover IRA with Company C will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

In accordance with a power of attorney on file in this office a copy of this letter is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact XXXXXXXX, ID Number XXXXXXXXXXXX, at XXXXXXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

Donzell H. Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose